IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO. 2 OF 1979

The Special Land Acquisition
Officer (7) Bombay & B.S.D.
Mun. Corpn. Extn. Building,
2nd Floor, Room No. 211,
Bombay 1.

Versus

Mrs. Karo Kumari Maker
since deceased through her
Legal Heirs :

1(a) Anil Prem Singh Maker
Indian Inhabitant of Bombay,
residing at Marium Lodge,
1st Floor, Worli Point,
Bombay 400 018.

1(b) Mrs. Hansa Bulan Das Gupta,
Indian Inhabitant of Doom Dooma,
Assam, Residing at Aurora Cinema,
Doom Dooma Teensukhia, Assam State.

1(c) Mrs. Anita Manohar Tolani,
Indian Inhabitant of Bombay
residing at Jal Darshan, 5th
Floor, L. Jagmohandas Marg,
Bombay 400 006. ... Claimants

Mr. U.J. Makhija with Mr. Pimple for B.M.C. for
ACquiring body.

Mr. Rajiv Narule i/by P.V. Nichani for Claimants.

CORAM : A.M. KHANWILKAR,J.
DATED : JUNE 28, 2005

ORAL JUDGMENT

1. This order will dispose of the Reference application under Section 18 of the Land Acquisition Act 1894 in relation to the two structures standing on C.T.S. No. 452 and 453,

along with the land underneath the said structures admeasuring 5,000 sq. yards.

2. Briefly stated, the Deputy Municipal Commissioner, (Improvements) Bombay Municipal Corporation in his letter dated 9.8.1972 addressed a proposal to the Commissioner Bombay Division, Bombay for acquisition of land admeasuring about 26,815 sq. mtr. at village Vile Parle, Tahsil Andheri, District Bombay Suburban bearing C.T.S.. No. 439 to 442, 447 and 451 to 453 and 454A and 444 Part. The proposal to acquire aforesaid land was for public purpose, namely, for Municipal school, garden, medical college and road. The said land was already notified for reservation in terms of the provisions of the Maharashtra Regional Town Planning Act, 1966. The Deputy Municipal Commissioner, therefore, requested for issuance of notification under Section 6 of the Land Acquisition Act, read with Section 126 of the M.R.T.P. act on 15.12.1972. Thereafter individual notices were issued to the owners of the land as well as occupants including tenants therein. After due enquiry, the Special Land Acquisition Officer (7) Bombay, and Bombay Suburban District, has passed the Award.

3. During the enquiry, the predecessor of the claimants before this court asserted that she was owner in respect of land underneath two structures referred to above standing on C.T.S. Nos. 452 and 453. In so far as claim of ownership of the land underneath the structures, the Special Land Acquisition Officer, on scrutiny of the documents on record, found that the Predecessor of the original claimant had purchased only the structures from the custodial department in the public auction held by the Deputy Custodian of the evacuee property. The land Acquisition Officer, accordingly, rejected the claim of the predecessor of the claimants in so far as entitlement to compensation for the land. On the other hand, found that the land was owned by one Pushpa I. Bhatia and, therefore, provided for compensation in respect of the land to said Smt. Pushpa Bhatia. In so far as the claim regarding two structures in question, the case of the predecessor of the claimants was to compensate in the sum of Rs.1,40,000/-. The Land Acquisition Officer however, has found that the structures were purchased by the husband of the original claimant from custodian department in public auction on 29.8.1960 for Rs.25,500/- only. The structures are made of stone/brick masonry in lime mortar. It has

a mangalore tiled roof. From the records, it was noticed that the area of the one structure admeasured 30 ft x 18 ft x 10 ft = 5400 Cubic Feet and that of the second structure admeasured 60 ft x 58 ft x 10 ft = 10,800 Cubic feet. The land acquisition Officer accordingly took aggregate area of two structures as 16,200 cubic feet. The Acquiring body had suggested the compensation for the said structures at the rate of 0.10 ps. per cubic ft. being demolition value therefor. The land Acquisition Officer however, was of the view that the said offer was very low and instead awarded compensation at the rate of 0.25 ps. per cubic feet towards demolition value of the structure. The total amount awarded to the Predecessor of the claimants in respect of the two structures towards demolition value of structures is Rs.4050/- only.

4. Being dissatisfied by the award passed by the Special Land Acquisition Officer, on 22nd January, 1974, the Predecessor of the claimants made representation to the Collector for making reference under Section 18 of the Act. Consequent thereto, the present reference has been forwarded to this court. In the statement of claim filed by the claimants before this court, they have prayed

for providing compensation not only with regard to the two structures but also with regard to the land underneath the said structures and abutting land to the extent of 5200 sq. yards, of C.T.S. No. 452 and 453. In the statement of claim it is mentioned that one structure is standing on CTS No. 452/11 to 24 admeasuring 742.2 sq. mtrs and second structure on C.T.S. No. 453/1 to 5 admeasuring 69.5 sq. mtrs. According to claimants, the average height of the structure can be assumed as 15 ft. and so computed, the aggregate area of two structures should be taken as 13,1008.3 cubic feet. In addition the claimants pray that the compensation in respect of the land to the extent of 5000 sq. yards be provided along with the other benefits. The claimants have adduced evidence by examining Anita Tolani as claimant's witness No. 1 and Mr. Rane, the Valuer appointed by the claimants who has filed the valuation report prepared by him, during the course of evidence. These two witnesses have been cross-examined on behalf of the S.L.A.O,. as well as the acquiring body. In addition, the structures were caused to be measured by taking joint measurement by the City Survey Officer. As per the directions given by this court, the City Survey Officer conducted joint survey and prepared report of the joint survey

regarding two structures dated 27.11.2003, which is also allowed to be taken on record.

5. After perusing the evidence adduced by the claimants, and considering the arguments advanced across the bar, following points will arise for my consideration:-

(1) Whether the claimants are entitled for compensation in respect of the land underneath the two structures and surrounded area about 5000 sq. yards. If yes, at what rate?

(2) Whether the claimants are entitled for compensation in respect of the two structures standing on C.T.S. No. 452 and 453 respectively. If yes, at what rate?

(3) What order?

6. In support of the claim for providing compensation with regard to the land admeasuring 5000 sq. yards of C.T.S. No. 452 and 453, the claimants have examined Smt. Anita Tolani. In her evidence, she has stated that the property was purchased by her father in a public auction which is the property in question being K-Ward

(Suburban), Pathan House No. K-7093 (1-2) and No. K-7094 (1,2,3,4 and 5) Chawl, bearing Municipal Demarcation No. 109 (a,b,c,d and e) Bunder Road, Irla, Vile Parle in Greater Bombay, Taluka Andheri, admeasuring 1613 sq. yards for a consideration of Rs.22,500/- for which a sale certificate was issued. The said sale certificate has been tendered in evidence and marked as Exh. C-2. It is stated that the land and structure originally belonged to one Pathan - Mr. Mutabarshah Kalandar Shah who migrated to Pakistan and the land and structures on the land had become Evacuee property which was put to public auction held in June, 1960. At the said auction, the said property was purchased by the father of the original claimant, which auction was held by the custodian of Evacuee properties only in favour of the displaced persons. It is stated in the evidence that as the property was sold in public auction being evacuee property in favour of displaced persons, it was a distress sale and for a price much lower than the market value. This witness has placed on record the letter issued by the Deputy custodian to evacuee property dated 31.3.1964 addressed to the Purchaser by the claimants indicating that the property was purchased by him in the said auction. It is then stated that the said property consisted of two

independent structures on the large piece of land which is around 5000 sq. yard. This witness has also relied on declaration executed by the said Mr. Mutabarshah Kalandar Shah dated 11.6.1964 which has been marked as Exh. C-4. In the said declaration, Mr. Mutabarshah Kalandar Shah has stated that the cost of structure was Rs.60,000/- and occupied area of about 5000 sq. yards. This witness then deposed that the property has been transferred in her name in Municipal records. The certificate regarding transfer of property in favour of the witness dated 10.10.1964 is produced on record and is marked as Exh. C-5. This witness has also placed on record the notice issued by the Corporation regarding assessment taxes, which letter is marked as Exh. C-6.

7. In so far as ownership of the land is concerned, this is the only evidence which has come on record. The certificate of sale Exh. C-2 dated 29.8.1960, provides that the predecessor of the claimants Premling Maker had given highest bid at sale by public auction held in exercise of the powers conferred upon the authority under Section 20 of the Displaced Persons (Compensation & Rehabilitation Act, 1954) on 27.6.1960; and the property described in the schedule and bid having

been accepted and the value thereof is paid in cash by adjustment of compensation from time to time, is declared purchaser of the said property. Reliance was then placed on Exh. C-3, a letter issued by the Deputy Custodian, Evacuee property dated 31.3.1964. This letter gives description of the boundaries of the property known as Pathan House sold to the predecessor of the claimants. It is further mentioned that the property Pathan House originally belonged to Mutabarshah Kalandar Shah Pathan and his right, title and interest in the property have been sold and amount of Rs.150/- yearly is payable in respect of the said property. The third document which has been relied upon by the claimant is Exh. C-4 namely declaration of said Mutabar Shah who was the original owner. It may be mentioned that although the claimants have produced the declaration, no effort has been made to examine said Mutabarshah Pathan to prove the contents of the declaration. Be that as it may, the declaration states that in the year 1927, the declarant reclaimed a large plot at Irla Tank and built thereon a house known as Pathan House at a cost of Rs.60,000/- which was completed and let out by him in the year 1935. No details regarding area of the plot reclaimed is provided nor the area of structure constructed by the declarant is

mentioned. It is further stated in this declaration that the said Pathan house comprised of two independent structure, bearing Municipal No. as 1, tile house No. K-7903 and No. 2 Chawl No. K-7904 and is situated at 109, Ghod Bunder Road, Irla, Vile Parle, Bombay 400 057. The boundaries of the property is also provided for. It is further stated that the property consisting of 5000 sq. yards free hold land. The declarant then mentioned that in 1952, the declarant was declared an evacuee and his entire Pathan House property described above was taken over by the Custodian of Evacuee property, Ministry of Rehabilitation, Government of India, Bombay. In August, 1960, the said property was purchased from the Custodian by Shri. Premsingh Harichand Maker, who has renamed the property as Hari Nivas. The next documentary evidence which is pressed into service is Exh. C-5 which is letter by Deputy Assessor and Collector (Subs) to the predecessor of the claimants. This letter gives the brake up of outstanding property tax and water charges to be collected in respect of the disputed property. Reliance is placed on Exh. C-6 which is notice issued by Managing Officer of Government of India, Ministry of Rehabilitation in the office of the Dy. Custodian of evacuee properties dated 10th December, 1960/10th January,

1961. By this notice it is notified that the property in question being evacuee property bearing No. 109, A, B, C, D,S. Vile Parle, K. Ward No. 79036 7904 Pathan House, Near Tank, G.B. Road, Bombay has been sold by a public auction by the Regional Settlement Commissioner, Bombay and the tenants residing therein were informed that they should pay all the rents with effect from 29th August, 1960 to the auction purchaser Shri. Pramsingh H. Maker, the predecessor of the claimant.

8. Even on fair reading of each of these documents Exh. C-2 to C-6, in my opinion, none of these documents would establish the right, title or interest of the predecessor of the claimants in respect of the land beneath the two structures or for that matter the abutting area to the extent of 5000 sq. yards, as is claimed. There is no other evidence forthcoming to establish title of the predecessor of the claimants in respect of the land beneath the two structures. In that sense, there is no reason to depart from the conclusion recorded by the Land Acquisiton Officer to provide any compensation to the claimants in respect of the lands admeasuring 5000 sq. yards on the reasoning that the evidence would only support the case of

the claimant to the extent that they have purchased the two structures on the suit land; whereas the land beneath the said structure, was owned by Pushpa Bhatia. In other words, it has been rightly found by the Land Acquisition Officer that the predecessor of the claimants had merely purchased the two structures from the Custodian from evacuee property, for which reason the claimants will not be entitled for compensation in respect of the land underneath the two structures or for that matter abutting area to the extent of 5000 sq. yards, as is claimed by them.

9. There is additional reason as to why the claimants are precluded to claim compensation in respect of the suit land underneath the two structures or abutting area to the extent of 5000 sq. yards. In as much as the land Acquisition Officer has found that the said land was owned by Pushpa Bhatia. On that finding, the compensation regarding the land has been provided to said Pushpa Bhatia at the rate of Rs.90/- per sq. mtr. The said amount has been made over to Pushpa Bhatia who was the original owner of the subject land. In that sense, it will be a case of apportionment, if at all the claimants were to succeed in establishing that they had right, title and

interest in the lands underneath the two structures and that the abutting area to the extent of 5000 sq. yards. If it is so, even then no relief can be granted to the claimants as the original owner Smt. Pushpa Bhatia is not party to the present reference.

10. Be that as it may, suffice it to observe that the claimants have no right, title or interest in respect of the land underneath the two structures which were purchased by their predecessor in public auction conducted by the office of Evacuee property. To that extent they should fail. As I have found that the claimants have no right, title or interest in the said land and therefore, are not entitled for any compensation in respect of the said land, it is not necessary for this court to go into the circumstances pressed into service on behalf of the claimants to determine the fair market price in respect of the said lands at the rate of Rs.200/- per sq. yard.

11. That takes me to the second question relating to the compensation for the two structures. In so far as the two structures are concerned, the Land Acquisition Officer has taken into account the area of two structures as 16200 Cubic feet. This figure

has been arrived as one structure was noted to be admeasuring 30x18x10 ft. = 5400 cubic ft. and the second structure was noted to be admeasuring 60x18x10=10,800 cubit feet. The SLAO has provided compensation at the rate of 0.25 Paise per cubic feet which is towards demolition value of the structures belonging to the claimants, in the aggregate sum of Rs.4050/-. In the evidence before this court, the claimants have examined, in support of their claim in the sum of Rs.140000/- towards two structures, Smt. Anita Tolani as Witness No. 1 as well as Valuer Ulhas Rane who has prepared the valuation report on instructions of the claimants on 22.6.1987.

12. At the outset, it needs to be mentioned that the fact that two structures are standing on land in question is not in dispute. In the statement of claim filed before this court, the claimants have given description of the two structures in the following manner :

The first structure situated on C.T.S. No. 452/11 to 24 admeasuring 742.2 sq. mtrs.= 7987 sq. ft.

The second structure on C.T.S. No. 453/1 to 5 admeasuring 69.5 sq. mtrs. = 742.82 sq. ft.

The aggregate area of two structures is stated in the statement of claim as 811.7 sq. mtrs. = 8733.9 sq. ft.

. However in the valuation report prepared by Ulhas Rane, the area of the two structures is provided as under :

P-1) 47’.0"x31’.0" - (22’.0"x12’.0")

- average height 15’.0"

P-2) 137’.0"x87’.0" +
13’.6"x60’.0"+2’.0"x30’.0" -
average height 15’.0"

13. Whereas, the SLAO in his award has computed the total area of two structures by keeping in mind the height of structure as 10 ft; Accordingly, has arrived at the area as 16,200 Cubic feet. On the other hand, the private valuer appointed by the claimants has assumed that the average height of the two structures was 15 ft; and applying that

scale, the valuer has computed the total area of the two structures as 2,09,730 Cubic feet.

14. According to the claimants, the SLAO was obliged to provide for market value for the two structures which were owned by the claimants. On the other hand, the SLAO has merely provided for demolition value of the structures which is unknown to law. The argument seems to be attractive, however, the same is answered in the decision of Ratan Kumar Tandon and Ors. Versus State of U.P. (1997) 2 Supreme Court Cases 161. The Apex Court in that judgement has observed that the burden is always on the claimants to establish proper market value of the trees or land or building. In Paragraph 9 of the same judgment while considering the question whether the claimant in that case was entitled to value of the building, it is observed that it is well settled law that when land and building are acquired by a notification, the claimant is not entitled to separate valuation of the building and the land. They are entitled to compensation on either of the two methods but not both. It is further observed that if the building is assessed, it is settled law that the measure of assessment to be based on either the rent received from the property with suitable multiplier or the

value of the building is the proper method of valuation. In that case, the land was separately valued. Relying on that fact, the Apex Court observed that building cannot again be separately assessed and compensation awarded except the value of debris. The Apex court, however, did not reverse the compensation awarded for by the High Court towards the value of the building as the State had not come in appeal against that order.

15. Suffice it to observe that the legal position as to whether claimants are entitled for valuation of the building separately in addition to the value of the land has been answered in this decision. In the present case, as is seen from the award, the SLAO has computed the value of the land. Applying the dictum of the Apex Court, as referred to above, as the value of the land has been determined and the amount has been made over to the original owner Smt. Pushpa Bhatia, the question of awarding seperate compensation in respect of the value of the building to the claimants would not arise.

16. The counsel for the claimant however, contends that the said decision can be distinguished as in that case the owner of the land as well as of the building was the same claimant. Unlike in the

present case where the land was owned by Pushpa Bhatia whereas the building was owned by the claimants. In my opinion, that cannot be the basis to distinguish the judgement with regard to the principle expounded therein that the value of the building cannot be separately awarded once the value of the land is determined in the award.

17. The Apex Court has also observed that it is well settled that if the building is assessed, the measure of assessment be based either on rent received from the property with suitable multiplier or the value of the building is the proper method of valuation. Relying on these observations, the counsel for the claimants would contend that the private valuer appointed by the claimants has provided details on which basis the compensation in respect of the building ought to be provided to the claimants. In the first place, from the valuation report dated 22.6.1987 it is seen that the total area of two structures has been computed on the assumption that the average height of the building was 15 ft.

18. In so far as question of valuation of the building is concerned, the claimants have mainly relied on the valuer's report dated 22.6.1987 and

has also stated in evidence that the details given by him in his evidence was based on the valuer's report. Suffice it to observe that the claimants witness No. 1 Ms. Anita in her cross examination deposed that there were 30 tenants on the property occupied by them in these structures. It is stated in her evidence that the rent approximately collected from the tenants in the year 1974 would be Rs.11,000 to Rs.15,000/- per year. She has admitted in her evidence that she would not be able to give details of the expenses incurred on the maintenance of the property. She has also admitted in her evidence that she has no personal knowledge about the average height of the structure. However, during the cross examination on behalf of the SLAO this witness has admitted that the figure of rent received from the tenants of the two structures to Rs.10,000/- to Rs.15,000/- per year rent was stated on the basis of some rent receipts. However, she did not produce the said rent receipts. In other words, the fact that the rent to the extent of Rs.10,000/- to Rs.15,000/- per annum was collected from the tenants in the two structures has not been proved by the claimants.

19. The claimants would then rely on the evidence of the private valuer appointed by them Mr. Ulhas

Rane. He has deposed that the area of the two structures is around 2,09,730.00 cu. ft. and the built up area is around 13,982 sq. ft. That the average height of the structure has been estimated as 15 ft. He further deposed that the valuation rate per cubic ft. with respect to the structures which had manglore tiles, roof of above on T.W. rafters and battens with Shahabad tiles flooring, after taking into consideration the market value, rateable value, cost of the building materials, depreciation, salvage values etc. the total value of land, reclamation and structures came to Rs.13,73,920/-. This figure has been arrived keeping in mind the structures were constructed prior to 1970 and were in sound and stable condition. This evidence is given on the basis of valuation report prepared by the said witness produced as Exh. C-12. In the cross examination, however, this witness has stated that the value of the structure has been derived on the basis of market value as if it was free hold land. He has stated that he was aware of the position that the owner of the land and structures standing thereon can be different. He states that however, the mode of valuation of structure will be the same. Although he has taken average height of the structure as 15 ft., the only justification that

can be ascertained from his cross examination is that the roof of the structure is sloppy. No other details are either given in the valuation report or in the examination in chief of this witness. He was further confronted during the cross examination, to which, he has conceded that for determining the built up area length and breadth of the structure is required. For determining cubic contents the height of the structure is required. In the later part of the cross examination, he has conceded that he has taken average height of the structure as 15 ft. because the roof is sloppy and has not measured the same himself. On the other hand, it is seen that the SLAO has taken the height of the structure as 10 ft and which version is corroborated by the height of the structure taken into account by the City Survey Officer who had conducted joint measurement of the disputed property pursuant to the orders of this court. This witness has admitted that the City Survey Officer has taken the height as 10 ft. We shall advert to this evidence in detail a little later. The witness (Valuer) was then cross examined on the issue of cost of reclamation. He has stated that on the basis of information given by his client, he has provided for cost of reclamation in his report as well as in his evidence. However, it is seen

that the buildings i.e. two structures were constructed by the original owner after reclamation of the land in the year 1927. In other words, no cost of reclamation of land was required to be paid by the purchaser or the claimants. The evidence of this witness has been critisized by the counsel appearing for the acquiring body on the argument that the witness although refers to sale instances in the valuation report has not bothered to prove the same in his evidence. On the other hand, in his cross examination he has been confronted with the suggestion to which he deposed that he did not collect the exact nature of the documents in the sale instances taken into consideration. It is further conceded that it is possible that agreement for sale is executed earlier and conveyance at the later stage. Further he has not verified the documents from the sub registrar's office. He has also stated that he did not insist on taking certified copy of the documents from the office of the sub registrar. This witness has then mentioned that when the valuation report was prepared by him, he was not aware that it was for the purpose of land acquisition reference. This witness is also confronted during the cross examination that there are other methods of valuation of building and the method of valuation adopted by him was bound to be

higher than the capitalisation method. This witness has also admitted that the area of structure mentioned in Paragraph 19 of Mrs. Tolani's affidavit is not found in the valuation report prepared by him. The witness has conceded that two structures in question are very old and the normal life of the said structure with Mangalore tile roof would be around 60 years. In other words, it is seen that structures in question have already survived the normal life of the buildings.

20. Relying on the above evidence, it is rightly contended on behalf of the acquiring body that the evidence of valuer pressed into service is not reliable. He has not bothered to observe the basic requirements to arrive at proper computation of valuation of the building. The claimants would then rely on the report submitted by City Survey Officer of the joint measurement conducted pursuant to this court's order. The report of the City Survey Officer gives the break up of the area of different building surrounding the suit structure. This report has been allowed to be taken on record and has not been disputed. Relying on this report, therefore, it was argued on behalf of the claimants that the report would indicate that the total area

of the structure is 1498.2 sq. mtrs. =16.120.63 sq. ft. According to claimants, the average height of the said structure was 15 ft and on computing the total area of the two structures on the basis of the total area will be atleast around 241809 cubit ft.

21. It was strenuously contended on behalf of the claimants that if the calculation arrived in the report of the City Survey Officer was to be accepted as it is, being undisputed, in that case, the claimants would be entitled to claim compensation in respect of the two structures in the sum of Rs.9,37,236/- as on 1974 (multiplying the aggregate area in cubit feet at the rate of Rs.4 per cubit ft). In the evidence of the valuer, however, no break up has been provided as to justify for claiming compensation at the rate of Rs. 4/- per cubic feet. Section 51 of the Evidence Act clearly provides that the information should be supported by the ground on which the same is received. In the valuation report prepared by the private valuer, no explanation has been offered as to on what basis he has assumed the value of the structure at the rate of Rs. 4/- per cu.ft. Even on fair reading of the report, all that the Valuer has stated is that the valuation of the structure

for 1974 considering the growing rate of the rental premises, rateable, value, the cost of the building material and also deprecation should be around Rs. 4/- per cu ft. This assumption is too general to justify the rate of Rs. 4/- per cu.ft. in respect of the valuation of the structure. Even in the evidence, in the examination in chief, the witness has not spelt out the details and the break up of the figure on the basis of which he has assumed that the rate of structure should be around Rs.4/- per cu. ft. If this is the nature of evidence on record, it is not possible to accept the same to answer the issue in favour of the claimants. On the other hand I find that the claimants have not furnished any legal evidence to justify the claim of valuation of structure as Rs.4/- per cu. ft. as on 1974.

22. That leaves us with the mode of valuation adopted by the S.L.A.O. as demolition cost in respect of the structure provided for by the claimants. Even the S.L.A.O. has not given any details as to on what basis the figure of 0.25ps. per cu. ft has been arrived at as demolition cost to be provided for the structure in question. In that sense, even the said material is insufficient to enable this court to ascertain the valuation and

method of valuation adopted by the S.L.A.O. The only option that remains to be considered is to provide for capitalisation method in respect of the structure. It is settled principle that capitalisation of income is an accepted method of valuation of building and ascertaining the market value of the same.

23. In the case of Collector of The Collector of Kistna, Masulipatam Vs. Sreemanthu Raja Yarlagadda Sivarama Prasad - A.I.R. 1938 Madras 33. It is observed that in the case of no evidence is adduced to show the condition of the building, the market value was determined on the basis of actual rental value. Even in the present case, the evidence, as adduced does not give the correct position about the condition of the building, except stated by the valuer to be stable. It has come in the evidence that the structures were constructed by the original owner in the year 1927. On the date of notification for acquisition, the structure had survived for over 35 to 40 years. The valuer in his evidence has admitted that the normal life of the structure with mangalore tiles roof is around 60 years. In the case of State of Madras Vs. S. Mohamed Ibrahim and others, AIR 1960 Madras 252 it is observed that the market value of the property

in municipality area is arrived at by multiplying the net annual income by the number yielded by dividing 100 by the rate of interest relevant at the time of the notification on gilt-edged securities. This is the only method which remains to be considered and can be invoked in the fact situation of the present case. This is so because, the evidence on record is not sufficient either to accept the method adopted by the S.L.A.O. or that suggested by the Valuer (Claimants).

24. In my view, for the purpose of adopting the method of capitalisation there is material on record from which the figures which are required for arriving at the capitalisation value can be discerned from the documents filed along with the statement of claim. It is mentioned that during the relevant time, the municipal rent received from the tenants from two structures was around Rs.426.19 per month. It is also seen from Exh. C-5 that the property tax during the same time was Rs.648.55 half yearly. That even the amount standing towards water charges, can be noticed from the same communication. The communication sent by the Deputy Custodian of Evacuee property Exh. C-3 mentions that the amount of Rs.150/- p.a. is payable in respect of the said structures which is

towards ground rent. Indeed, it is not possible to quantify the amount towards the maintenance because the claimants' witness Anita Tolani has during her cross examination admitted that she will not be able to give details of expenses incurred for maintenance of the property. Having regard to the evidence on record and providing for repairs and maintenance cost even at the minimum or conservative rate of 30% of the rental value received per annum, the capitalisation value of the subject buildings can be arrived as under :

(A) Monthly rent Rs.426.19

(B) Gross annual rent Rs.5114.28

(c) Less Outgoings :
(i) Property taxes Rs.1297.10
(ii) Water charges Rs. 500.00
(iii)Ground rent Rs. 150.00
_____ Rs.1947.10

Net Rent Rs.3167.18

Less 30% towards repairs etc. Rs. 950.00

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Rs.2217.18

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25. Applying the principle underlying the decision in State of Madras Vs. S. Mohamad (supra) on multiplying the net income of Rs.2217.18 by the rate of interest relevant at the time of

notification (estimated 10%) p.a. on the figure that can be arrived at as capitalization value of the structures would be around Rs.22,172/-. In addition, the claimants will be entitled to other benefits under Section 23 of the Act of additional interest and solatium. The advocates appearing for the respective parties were called upon to furnish the computation on the assumption that the value of two structures has to be determined as Rs.22,172/-. They have furnished the computation of amount. Reference would succeed only to this limited extent. The computation of the amount to be awarded is as follows :

A. 1.	Market value on capitalisation Method ..	Rs.22,172.00
	2. Add: 12% p.a. u/s.23(1A) on Rs.22,172/- for the period from 4.1.1973 till 2.1.1974 i.e. for 1 year and 18 days ..	Rs. 2,791.00
	3. Add : 30% solatium on Rs.22,172/- u/s.23(2)..	Rs. 6,652.00
		Rs.31,615.00
	4. Less: Amount paid under the Award ...	Rs.4,657.50
		Rs.26,957.50
B. 5.	Add: Interest u/s.28 on Rs.24,166/- @ 9% from 22.1.1974 to 21.1.1975	Rs. 2,175.00
	6. Add: Interest on Rs.24,166/-	

@15% p.a. from 22.1.1975 to 28.6.2005 i.e. 30 years 5 months and 6 days u/s.28 (proviso)...	Rs.1,10,317.00

	Rs.1,39,944.50
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Note :
A. Market value is arrived at by multiplying net annual income by 10.

B. The sum of Rs.24,166/- is arrived at by adding Rs.22,172/- and Rs.6,652/- i.e. 28,824/- and deducting therefrom Rs.4658/- already paid.

26. Accordingly I proceed to pass the following

order :

. Reference is partly allowed in the above terms.

(A.M. KHANWILKAR,J.)